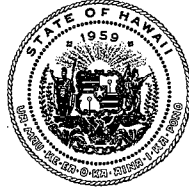


HB 1071



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TO THE
SENATE COMMITTEE ON WAYS AND MEANS
THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Monday, April 6, 2009
9:30 a.m.

TESTIMONY ON H.B. NO. 1071, H.D. 3, S.D. 1 - RELATING TO MORTGAGE
SERVICERS

THE HONORABLE DONNA MERCADO KIM, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").
The Department strongly supports this Administration bill relating to mortgage servicers.

The purpose of the bill is to establish a State system of licensure and regulation to
ensure that servicers of residential mortgage loans secured by real property located in
the State of Hawaii conduct those activities responsibly and with requisite accountability
to borrowers.

Servicers that engage in servicing residential mortgage loans are frequently a borrower's only contact for information regarding the borrower's loan, and the only party to which the borrower may turn to address and resolve matters that can arise during the course of making payments on that loan. A number of other states have robust mortgage servicer related regulatory and supervisory provisions in their statutes. However, a borrower who currently owns property in Hawaii securing a residential mortgage loan may discover that the borrower may have little, if any, recourse apart from costly litigation if a mortgage servicer mishandles its servicing responsibilities, or otherwise neglects or refuses to address problems, errors, or other concerns that may arise for the borrower during the term of the loan.

The present wave of foreclosures impacting borrowers who obtained subprime and non-traditional mortgage loans has highlighted the fact that many servicers are unable or disinclined to assist borrowers in distress since the servicers may lack adequate staffing or the financial incentive to do so. In many instances, assisting a borrower by negotiating a modification or workout of a delinquent loan may be more costly to the servicer than the alternative of allowing the mortgaged property to be sold in foreclosure, which transfers the financial loss and other ensuing consequences onto the borrower and lender rather than the servicer.

A prior law regulating the activities of real estate collection servicing agents, Chapter 454D, HRS, was repealed by Act 254, Session Laws of Hawaii, 1999, upon the

Legislature's finding that regulation of these servicers was "unnecessary" as it "does not serve to protect the public health, safety, and welfare." However, the foreclosure crisis currently being experienced by millions of homeowners nationwide and many here in Hawaii has focused attention on the fact that borrowers are now losing their homes as the result of foreclosure actions that are being initiated, in most instances, by mainland servicers unregulated in Hawaii.

This measure does not require that servicers agree to loan modifications, but rather provides, more generally, for the licensure and regulation of those residential mortgage servicers that service loans secured by property located in Hawaii, many of which presently may not be otherwise regulated or subject to existing State laws. One outcome will be that a borrower who owns property in Hawaii securing a residential mortgage loan will have the enhanced consumer protection afforded by an available local complaint process and the statutory enforcement powers conferred upon a Hawaii regulatory agency to compel servicer accountability to such borrowers. Presently, such borrowers find themselves at the mercy of regulatory agencies in other states that can and do decline to assist a borrower if the property securing the loan in question is not also located in the state where the servicer is licensed.

As currently ammended, this measure (the "Act"):

- defines key terms, including "mortgage servicer";
- mandates the licensing of non-exempt mortgage servicers;

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- exempts specified persons including insured depository financial institutions and their operating subsidiaries from the application of the Act;
- establishes an initial license application fee of \$500 and an annual license renewal fee of \$250;
- specifies duties of, and required disclosures to be made by, mortgage servicers;
- authorizes sanctions including the suspension, revocation and denial of a license for violations of the Act;
- confers and delineates the powers and authority of the Commissioner to carry out the purposes of the Act;
- acknowledges a private right of action by any person damaged as a result of a violation of the Act;
- provides for an administrative penalty of not more than \$5,000 for each violation of the Act; and
- provides that all fees and fines collected by the Commissioner under the Act are to be deposited in the compliance resolution fund established pursuant to Section 26-9(o), HRS.

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The Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.